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Robert R. Corbin

December 7, 1979

INTERAGENCY

Mr. James J. Brunstein  
Associate Superintendent  
Arizona Department of Education  
1535 W. Jefferson  
Phoenix, Arizona 85007

Re: I79-290 (R79-263) Supplement

Dear Mr. Brunstein:

We wish to clarify a statement contained in Ariz. Atty. Gen. Op. No. 79-290, in response to your question concerning the duty of a public officer to notify his "superior authority" of a conflict of interest. Our opinion states that a school district board member is required to notify the other members of that board when a conflict of interest makes it impossible for him to act in his official capacity. We made the statement to identify the "superior authority" who must be notified pursuant to § 38-508.A. However, our statement is not intended to imply that such notice satisfies other disclosure provisions contained in Arizona's conflict-of-interest statutes. In addition to the notice described in A.R.S. § 38-508.A, A.R.S. § 38-503.B requires the school board member make known his conflict of interest.<sup>1</sup>

Sincerely,

*Bob Corbin*

BOB CORBIN  
Attorney General

BC/mm

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<sup>1</sup> A.R.S. § 38-503 provides in pertinent part:

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Footnote 1 Continued

B. Any public officer or employee who has, or whose relative has, a substantial interest in any decision of a public agency shall make known such interest in the official records of such public agency and shall refrain from participating in any manner as an officer or employee in such decision. (Emphasis added.)

I. A.R.S. § 38-502 defines "make known" as meaning:

... the filing of a paper signed by a public officer or employee which fully discloses a substantial interest or the filing of a copy of the official minutes of a public agency which fully discloses a substantial interest. The filing shall be in the special file established pursuant to § 38-509.



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December 4 , 1979

Mr. James J. Brunstein  
Associate Superintendent  
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1535 West Jefferson  
Phoenix, AZ 85007

Re: I79- 290 (R79-263)

Dear Mr. Brunstein:

We have reviewed your opinion request of September 24, 1979, concerning the applicability of Arizona's conflict of interest statute, A.R.S. §§ 38-501 et seq., to the following fact situation:

A local school board member is employed by the Arizona Education Association as a Uniserv Director. As a Regional Uniserv Director, the school board member assists and represents local affiliates of the Arizona Education Association (AEA) in meet-and-confer sessions with school boards concerning teachers' salaries, fringe benefits and teacher grievances. The school board member does not represent any AEA affiliates or teachers in the school district where he serves as a board member. However, the school board member's spouse is also a Uniserv Director performing the same type of services as her husband and she does represent an AEA affiliate and individual teachers of the district where her husband serves on the school board.

Your letter asks the following questions:

1. Does the school board member's employment with the AEA, or that of his spouse, as Uniserv Directors, create a conflict of interest with respect to the school

board member's statutory and other duties as an elected trustee within the meaning of A.R.S. §§ 38-501 et seq., and do such provisions preclude the school board member, as an employee of a teacher organization, from serving on the school board?

2. If the answer to the first question is in the negative, are there any specific duties under A.R.S. § 15-442 or other general duties and obligations of a school board member that this trustee must refrain from discussing or voting on due to conflicts between A.R.S. § 38-501 et seq. and his private employment?

3. If the answer to the first question is in the negative, and in light of the fact that the school board member's dealings with the other districts include negotiation of salary and benefits, grievances, and related matters, while those of his wife involve the board member's district, does A.R.S. § 38-501 et seq. preclude the trustee from participating in discussions and decisions involving teacher salaries, benefits, personnel policies or teacher grievances as a trustee with his school board?

A.R.S. § 38-501.B states:

B. Any public officer or employee who has, or whose relative has, a substantial interest in any decision of a public agency shall make known such interest in the official records of such public agency and shall refrain from participating in any manner as an officer or employee in such decision.

In determining whether or not there is a "substantial interest" which constitutes a conflict of interest, the Arizona conflict of interest statute offers some general guidelines. A.R.S. § 38-502.11 defines a "substantial interest" as: ". . . any pecuniary or proprietary interest, either direct or indirect, other than a remote interest."<sup>1</sup> In Ariz.Att'yGen.Op. No. 77-41, we held that the employment of a school board member as a Uniserv Director did not by itself constitute such a substantial interest in the actions of the board on which he served to create a conflict of interest requiring either his

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1. A.R.S. § 38-502.10 describes ten situations which are identified as "remote interest[s]", none of which are applicable to the fact situation described in your letter.

resignation from the board or preclusion from participation in discussions relative to teacher salaries, benefits, personnel policies or teacher grievances.<sup>2/</sup>

After reviewing our prior opinion, we now conclude that a board member who is employed as a Uniserv Director does have a "substantial interest" in certain decisions of the school board on which he serves. Even though the board member does not personally represent AEA affiliates or teachers in his school district, he has at least an indirect direct proprietary and pecuniary interest in voting in accordance with AEA policies on issues that affect the AEA. His employment duties include facilitating the programs and activities of the AEA and supporting effective political action with respect to issues on which the AEA has taken a position. His continued employment as a Uniserv Director is presumably dependent upon how well he supports AEA-related matters, thus creating a substantial interest in those decisions to be made by the school board which involve issues on which the AEA has advocated a particular point of view or taken a formal position.

We also conclude that the occupation of the spouse of the board member creates a conflict of interest for the board member. As a representative of a group of individuals who are involved in bargaining with the school board for improved working conditions and salaries, the spouse is in a direct adversary position with respect to the school board. As an agent of the district's employees, the spouse has a compelling personal interest in the decisions of the school board relative to personnel policies.

While we believe that the substantial interest of the husband and the spouse creates a conflict of interest with respect to personnel matters, we do not believe that there is necessarily a conflict of interest with respect to all matters

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2. We based our opinion upon the fact that the school board member did not represent any teacher employed by the school board on which he served. The opinion also emphasized the fact that, although a portion of the Uniserv Director's salary came indirectly from dues paid by teachers employed by the board on which he served, the Uniserv Director had no control over the amount of dues paid or how such funds were to be spent, nor did the district teachers exercise any control over the salary or tenure of the Uniserv Director.

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which are considered by the school board. While the identification of a conflict of interest is relatively straightforward with respect to teacher salaries, teacher benefits and teacher grievances, we cannot state with certainty the potential number of decisions which come before a school board that may create a potential conflict of interest for this school board member. We would suggest that the school board member seek legal advice from the district's legal counsel, the Maricopa County Attorney, with respect to any specific questions of potential conflict of interest when and if they arise.

Your letter also raises two general questions relative to A.R.S. § 38-508, subsections A and B. You have informed us that the first question was intended to ask how A.R.S. § 38-508.A would apply to the factual situation described in your opinion request if we were to conclude that the board member could not participate in certain activities of the school board due to a conflict of interest. We understand that your specific concern is: "If a school board member is unable to act because of a conflict of interest, to whom must he give notice of the conflict?"

A.R.S. § 38-508.A. provides:

If the provisions of § 38-503 prevent an appointed public officer or a public employee from acting as required by law in his official capacity, such public officer or employee shall notify his superior authority of the conflicting interest. The superior authority may empower another to act or such authority may act in the capacity of the public officer or employee on the conflicting matter.

A school district is a political subdivision of the state, and the district school board is the highest governing body of that political subdivision. See A.R.S. §§ 15-431 and 15-541. Therefore, we believe that an individual board members is required to notify the other member of that school board of a conflict of interest which will make it impossible for him to act in his official capacity.

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Your last question asks us to give examples of situations which are intended to come within the meaning of A.R.S. § 38-508.B. Since this question does not address a particular situation, but is asking simply for a general statutory interpretation, we decline to respond to this question.

Sincerely,



BOB CORBIN  
Attorney General

BC/mm